

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





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# 75-1035

To be argued by  
DAVID V. KEEGAN

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## United States Court of Appeals

For the Second Circuit

Docket No. 75-1035

UNITED STATES OF AMERICA,

*Appellee,*

—v—

FRANK ELIANO,

*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

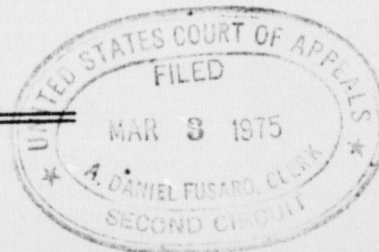
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### APPENDIX TO APPELLANT'S BRIEF

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JUDGE TYLER

74 CRIM. 267

TITLE OF CASE

THE UNITED STATES

VS.

FRANK ELIANO

ATTORNEYS

For U.S.:

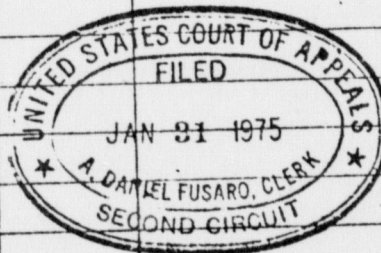
Charles E. Padgett, AUSA  
264-2990

For Defendant:

Kenneth Kaplan  
919 Third Ave.  
New York, N.Y. 10022  
tele: 688-0147

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ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(03)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court, 26					
Witnesses, 7201 & 7203					
Income tax evasion (Cts1-3)					
Failure to file income tax					
return. (Ct4)					
(Four Counts)					



DATE	PROCEEDINGS
3-18-74	Filed indictment ordered sealed. B/W ordered. Motley, J.
3-19-74	Indictment ordered unsealed and resealed. Motley, J.
3-27-74	Indictment ordered unsealed. Motley, J.
4-8-74	Adj. to 4-22-74. Tenney, J.
4-22-74	No appearance (Court directs entry of not guilty plea. Case assigned to Judge Tyler for all purposes. Pierce, J.
5/3/74	Def. produced on warrant (atty. present) def. pleads not guilty. Case referred to Tyler, J. 10 days for motions. Bill filed by



DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
0/15/74	Deft. (atty. present) application for reduction of bail denied. Deft. directed to surrender his passport to U.S. Atty. by 10/18/74 at 12 noon. Tyler, J.		
0/17/74	Filed notice of appearance by atty.		
0/23/74	Filed deft.'s notice of motion for bill of particulars and for discovery and inspection.		
1/7/74	Filed Govt.'s notice of readiness for trial.		
1/19/74	Filed memo-end. on motion dated 10/23/74. Motion disposed of by agreement of counsel and in accordance with the rulings of the undersigned respecting items or paragraphs 2 and 3(c) placed on the record at the hearing today. Tyler, J. mn		
1/22/74	Filed deft.'s notice of motion re: discovery. ret: 11/22/74		
1/25/74	Filed memo-end. on motion-(affdvt. of Govt. in support) ... Motion to quash the subpoena duces tecum served by on on behalf of deft. upon the I.R.S. is granted in all respects. Tyler, J. mn		
1/25/74	Filed Govt.'s memo. of law in support of motion to quash a subpoena.		
2/6/74	Filed Govt.'s pre-trial memo. of law.		
2/6/74	Filed Govt.'s request to charge.		
2/2/74	Deft. Frank Eliano- (atty present) trial begun with a jury is to each of counts 1,2,3,4.		
2/2/74	Trial cont'd.		
2/4/74	Trial cont'd.		
2/5/74	Trial cont'd. & concluded. Deft's motion for acquittal- denied. Deft. found guilty al counts 1,2,3, & 4. Deft. sentenced. Sentence set for 1/10/75. Tyler, J.		
	Filed transcript of record of proceedings dated 1/10/75		

RECEIVED 11/10/75

	PROCEEDINGS	Date Order Judgment N
0/75	Filed JUDGMENT (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) YEARS on each of counts 1,2 and 3 to be served concurrently with each other. SIX (6) MONTHS on count 4 is to run consecutively of counts 1,2 & 3. It is furthered ordered that the deft. be examined to determine if a medical problem exists and undergo psychiatric consultations if deemed necessary. Tyler, J. issued all copies.	
/75	Filed deft.'s notice of appeal from judgment of conviction of 1/10/75. mailed copies.	
1/31/75	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.	
	<p data-bbox="966 1186 1462 1365"> A TRUE COPY  RAYMOND E. BURTON, Clerk  <i>A. E. Thompson</i>  Deputy, Clerk </p> <p data-bbox="1255 1995 1354 2100">C</p>	



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1 DUpa

5

2 What do you want to do? We can call a panel up right away  
3 or whatever you say.

4 MR. KAPLAN: May I have a moment, your Honor?

5 THE COURT: Sure.

6 (Pause.)

7 MR. KAPLAN: Your Honor, I think we will go to  
8 trial.

9 THE COURT: All right.

10 MR. PADGETT: Your Honor, on the government's  
11 direct case I intend to introduce evidence that the  
12 defendant in 1971 pleaded -- excuse me, 1972 -- pleaded guilty  
13 to promoting prostitution in the second degree, a Class E  
14 felony under State law. I thought we might settle this  
15 now because doubtless there would be some objections to that  
16 testimony should I offer it.

17 It is my intention to offer, through the  
18 reporter who took the plea, who took the minutes of the plea,  
19 the defendant's statement that he pled guilty and he was  
20 guilty to particular acts.

21 THE COURT: Well, does the defendant object to  
22 that?

23 MR. KAPLAN: Yes, your Honor, rest  
24 sirnously.

25 THE COURT: I'm not going to rule on this now



1 DIRECT.

6

2 although I clearly see relevance in the context of this  
3 case, but I'm going to wait until I hear a little bit of the  
4 government's proof before ruling on that. In my judgment  
5 it's completely relevant; there's no doubt of that. However,  
6 it seems to me under prevailing doctrine the Judge always  
7 has to worry about the prejudicial effect and then has to  
8 balance the problem as against the cogency of the proof from  
9 a relevant point of proof in the case itself. I don't  
10 see how I can responsibly do that until I have heard a  
11 little bit of the government's proof.

12 MR. PADGETT: I understand, your Honor. I  
13 thought perhaps we could anticipate it.

14 THE COURT: Thanks for bringing it up. I  
15 suggest we go ahead and hear some witnesses and then  
16 I will be in a better position to evaluate your offer and  
17 the defense's objections.

18 MR. PADGETT: Very well, your Honor, thank you.

19 (Pause.)

20 THE COURT: Gentlemen, we are out of jurors and  
21 there will be at least a 30-minute delay. I'm sorry  
22 to say. I knew at the minute I bent my way into this  
23 building early this morning. I could tell. 30 percent of  
24 the population of this great city were fascinated by this  
25 kooky watchman scared to death. The pendulous sits

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1 lzkm 109

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2 (Witness excused.)

3 MR. PADGETT: The Government calls Arlyne Segal.

4 A R L Y N E S E G A L , called as a witness by the  
5 Government, being first duly sworn, testified  
6 as follows:

7 MR. KAPLAN: Your Honor, may we approach the  
8 side bar before the witness testifies?

9 THE COURT: There is no need to approach the  
10 side bar. I think you are entitled to know who the  
11 witness is.

12 DIRECT EXAMINATION

13 BY MR. PADGETT:

14 Q Miss Segal, what is your occupation?

15 A I am a court reporter.

16 Q For which court?

17 A For the New York State Supreme Court, Criminal Term.

18 Q Were you so employed in June of 1972?

19 A Yes, I was.

20 MR. KAPLAN: I would like to get to the side bar.

21 THE COURT: You said you are a court reporter  
22 for the Supreme Court of New York?

23 THE WITNESS: Right.

24 THE COURT: New York County?

25 THE WITNESS: Right.

1 lzk

Segal-direct

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2 THE COURT: Now, Mr. Padgett, I think I have  
3 divined what the problem is, at least an outline. Would  
4 you mind coming up with Mr. Kaplan.

5 Forgive us, ladies and gentlemen, and Miss Segal,  
6 for the moment.

7 (At the side bar)

8 THE COURT: Now, I am taken aback. I thought  
9 that from what you told me last evening that you weren't  
10 going to have any more witnesses except three; did you  
11 include Miss Segal?

12 MR. PADGETT: At that point, your Honor, I did  
13 not expect to call Sandra Marchand to the stand today.

14 THE COURT: In any event, Mrs. Segal, I take  
15 it, is here to identify some court recording?

16 MR. PADGETT: Miss Segal was the court reporter  
17 who took the stenographic minutes of the plea entered by  
18 Mr. Eliano in New York State Supreme Court. And I would  
19 offer her stenographic minutes, actually her testimony as  
20 to the stenographic minutes concerning Mr. Eliano's  
21 admission against penal interest in that he admitted  
22 the crime of promoting prostitution in the second degree.

23 MR. KAPLAN: Your Honor, the defendant --

24 THE COURT: Just a moment. When did this  
25 happen and for what period of time?



1 lzkm

Segal-direct

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2 MR. PADGETT: This happened in June, the  
3 admission was on June -- excuse me, May 31, 1972, and it  
4 concerned his admission that during the years 1967 through  
5 1970 he coerced and promoted prostitution of Sandra  
6 Marchand and Frances Bak.

7 MR. KAPLAN: Your Honor, the defendant is not  
8 taking the stand. Obviously his character is being brought  
9 in issue without his testifying.

10 THE COURT: His character, in a sense, is very  
11 much in issue because of the nature of the Government's  
12 proof heretofore.

13 MR. KAPLAN: Further, your Honor, I would believe  
14 that admission of that sort would be no different than any  
15 other possible Miranda type admission. It could very  
16 well be, your Honor, that before a plea is taken and ad-  
17 missions given, that one ought to be warned against  
18 possibility that that judicial admission may be the  
19 foundation and bottom of a subsequent crime.

20 THE COURT: So that the record is abundantly  
21 clear, I take it that all you intend to do is offer what  
22 he said on his plea?

23 MR. PADGETT: That is correct, your Honor.

24 THE COURT: And there is not going to be any  
25 talk about sentence or any of that?

1 lzk

Segal-direct

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2 MR. PADGETT: Certainly not, your Honor. I  
3 believe the witness's testimony will be to the effect  
4 Mr. Eliano, how do you plead to the second count of the  
5 indictment charging the promoting of prostitution in the  
6 degree of a Class E felony. Guilty.

7 THE COURT: I am sure I am not very much  
8 interested in that. If it is going to be a stereotype  
9 business thing, it won't state what he is admitting.

10 MR. PADGETT: He is admitting that he pleaded  
11 guilty to promoting prostitution in the second degree  
12 under a particular count of an indictment, which I would  
13 then offer in evidence through the Clerk of the Court of  
14 the New York State Supreme Court, and that indictment or  
15 that count of the indictment ~~regales~~ how he promoted the  
16 prostitution of Sandra Marchand and Frances Bak. One count  
17 in a 52 count --

18 THE COURT: May I see this indictment?

19 MR. PADGETT: Unfortunately, we are getting the  
20 Clerk over here now.

21 MR. KAPLAN: Your Honor --

22 THE COURT: Just a moment, please.

23 Getting anything out of you two is like pulling  
24 teeth. Let's go back. You don't even have the indictment?  
25 How can I make these marvelous rulings you always require



1 lzkm

Segal-direct

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2 unless you can tell me what is afoot here. I want to  
3 see the indictment.

4 MR. PADGETT: Your Honor, I have been trying  
5 since nine o'clock this morning to get a clerk from the  
6 Supreme Court over here; and I can't get him.

7 THE COURT: Do you have other witnesses?

8 MR. PADGETT: Yes, I can put other witnesses on  
9 the stand.

10 THE COURT: This trial has dragged all day. It  
11 is incredible. It hasn't been your fault, I must admit.

12 MR. KAPLAN: Apropos to the admonition your  
13 Honor gave me, did your Honor believe that the cross I  
14 attempted was of the nature, the way you described it,  
15 Judge, you thought the cross examination of Sandra was  
16 done merely to extend time or to prolong the trial?

17 THE COURT: These long delays, you would stand  
18 up and say nothing.

19 MR. KAPLAN: Judge, in answer to that, I have  
20 a load of papers in front of me. I can only try to  
21 introduce an exhibit --

22 THE COURT: It is not my purpose to blame you.  
23 It is my purpose to keep a trial moving. One of the  
24 legitimate complaints the lay public has about our  
25 profession is our dilatory performance in the courts.

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1 lzk

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2 approach the bench with counsel and the reporter? I  
3 think I can speed matters up.

4 THE COURT: All right.

5 (At the side bar.)

6 MR. PADGETT: Your Honor, I have a xerox copy  
7 of the indictment now. Obviously it is not the original.  
8 It was in my files and pending the arrival of the clerk  
9 from the New York State Supreme Court, I would ask the  
10 Court to examine that.

11 THE COURT: Let me ask you something, Mr. Padgett.  
12 You have tried these cases before. Have you ever been  
13 able to use this sort of evidence at one of those other  
14 cases?

15 MR. PADGETT: The situation hasn't arisen before,  
16 your Honor.

17 THE COURT: Have you got any case law in support  
18 of this?

19 MR. PADGETT: Not at this time, your Honor. I  
20 would be glad to do the research which your Honor desires.

21 THE COURT: It seems to me if this is so  
22 important, somebody should have been giving this careful  
23 thought. When I put you off the other day, I recognized  
24 that because of the peculiar nature of it, of this case,  
25 that it may well be admissible, but I would think,

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2 particularly since you are the acknowledged expert, the  
3 least you could have done was to help the Court out. I  
4 don't understand. You know the usual rule.

5 MR. PADGETT: I have, your Honor. I have done  
6 some preliminary research on this and it appears that the  
7 decision is really whether or not the prejudicial value  
8 of the information contained in the witness' testimony  
9 outweighs the probative value.

10 THE COURT: I think that is probably so, but on  
11 the other hand, I was just curious, and I think I have a  
12 right to be curious enough to ask for any help that the  
13 moving party for such evidence can give.

14 MR. PADGETT: My initial research indicated that  
15 such evidence has been used in extortion cases, and cases  
16 of that nature. There has never been --

17 THE COURT: I suggest that any case you can give  
18 me, it doesn't have to be a brief, just give me a citation.  
19 But I think perhaps I should have spelled it out the other  
20 day when you arose and raised this even before we picked  
21 the jury, I probably should have spelled it out. That  
22 seems to be necessary these days. I always thought that  
23 a Judge didn't have to ask counsel specifically for  
24 everything. I would really appreciate a case on this  
25 analogous to it.



1 lzk

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2 MR. PADGETT: I do have some analogous cases,  
3 not in this particular area, but not with this type of  
4 prior background. Unfortunately I don't have them here  
5 in court. They are in my office.

6 MR. KAPLAN: Your Honor, anyone walking in this  
7 courtroom will think there is a prostitution case being  
8 tried here. I hear very little about money and taxes,  
9 and a lot about what a pimp he is. If this is permitted --

10 THE COURT: All right, Mr. Kaplan.

11 Is it the 4th count that you want to get into?

12 MR. PADGETT: I believe it is the 2nd count.  
13 Under the 2nd count of the indictment.

14 THE COURT: I don't see any 2nd count. I think  
15 you better get your witnesses in here and forget this.  
16 This seems to be -- the indictment doesn't seem to have  
17 a 2nd count. You have an incomplete copy. Why don't you  
18 go ahead with the witnesses other than this.

19 MR. PADGETT: Your Honor, might I suggest this  
20 is an opportune time to take about a five minute break.  
21 I am not trying to delay proceedings, but I would like  
22 an opportunity to make a couple phone calls now to see if  
23 I can get some witnesses here which might allow us to end  
24 this today.

25 THE COURT: Wait a minute. You say you don't

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1 dhkm

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2 UNITED STATES OF AMERICA

3 vs.

74 Cr 267

4 FRANK ELIANO

5 December 5, 1974  
6 10 a.m.

7 (Trial resumed.)

8 (In the robing room.)

9 THE COURT: Two of our jurors are not here yet.  
10 They are still missing, and I thought we ought to use this  
11 time to go into something.

12 You are going to dig me out a case, Mr. Padgett?

13 MR. PADGETT: Yes, your Honor, I have a number  
14 of cases, if I can bring them in. I have the books here,  
15 in fact.

16 THE COURT: Oh, good.

17 MR. PADGETT: Your Honor, as I suspected, there  
18 were no cases directly on point. However, I was able to  
19 find one case in another Circuit where the prior conviction  
20 of a brothel keeper was admitted into evidence. Admittedly  
21 on a different type of income tax case, a net worth case,  
22 but that was the Williams case in 355 Fed. 2d, which is  
23 here. Within this Circuit, however, there are a number  
24 of cases including the Knoll case, at 379 Fed. 2d, --

25 THE COURT: Wait a minute. Hold on. Is that

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2 the case of Larry Knoll?

3 MR. PADGETT: I believe so, your Honor.

4 U. S. vs. Light --

5 THE COURT: Hold on. Wait a minute.

6 What is this Knoll case, 365?

7 MR. PADGETT: 379. I don't have that volume.

8 I have the Light case, a more recent case, which cites  
9 Knoll. 394 Fed. 2d, 912.

10 THE COURT: Just a minute here.

11 I don't see anything in Light that seems to be  
12 in point here.

13 MR. PADGETT: There's nothing immediately on point  
14 in any case I could find. The case I have indicated to  
15 the Court and the others I have here I believe stand for  
16 the general proposition that evidence of prior crimes may  
17 be admissible to show certain points in the Government's  
18 direct case, even though they may be different crimes.  
19 In one case we have a gambling conviction being admitted  
20 in an income tax evasion case. When the monies generated,  
21 which were the subject of the income tax case, were  
22 generated through the man's gambling activities for which  
23 he had been convicted.

24 THE COURT: Wait a minute. Wait a minute. What  
25 is throwing me off, you keep talking about how Light refers



1 dhkm

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2 to Knoll. What you are talking about really is what I  
3 call the Bozza rule.

4 MR. PADGETT: Yes, your Honor. That is 365  
5 Fed. 2d, which I have here.

6 THE COURT: I am sorry, you threw me off, or I  
7 misunderstood perhaps when you kept referring to United  
8 States vs. Knoll. You are relying on the Bozza rule.  
9 That, I think, is generally the rule which is applicable  
10 here, or certainly you are contending it is.

11 MR. PADGETT: Not only Bozza, your Honor, but  
12 Guidarelli, at 316 Fed. 2d, 523, which is the gambling  
13 and income tax evasion case I referred to.

14 THE COURT: Have you got that right there?

15 MR. PADGETT: Yes, your Honor.

16 THE COURT: Now, perhaps we didn't give you a  
17 sufficient chance at the side bar when we discussed this  
18 yesterday, Mr. Kaplan, but do you mind reciting the basis  
19 of your objection again before I make up my mind here?

20 MR. KAPLAN: Yes, your Honor. The defendant  
21 will not testify in his own behalf. Therefore, I believe  
22 by permitting the plea on a prior crime in 1972 conviction,  
23 would be in derogation of all the law that we know on the  
24 point. To me it is a rather simple proposition, Judge.  
25 The defendant doesn't take the stand and therefore his

dhkm

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character and reputation can't be brought to the jury.

THE COURT: I don't quite agree with you it is that simple. That, of course, is the general proposition. In most criminal cases. However, here the proffered testimony goes to the heart of the Government's case, and, therefore, the question really could be simply put as to whether or not the rule of United States vs. Bozza, United States vs. Deaton, and similar cases in this Circuit doesn't apply.

In other words, the Government here is offering this proof not to show bad character on the part of Mr. Eliano, but to show that it is true, as they contend, that he was not just a hair dresser or a beautician, he was a pimp, and that there was a substantial income which he didn't pay a tax upon, and that he did this openly and knowingly and so on.

So the question really which the Trial Judge has to decide is: Is it sufficiently germane in that regard to become admissible? And I think it is.

Also, I might point out, really all the prejudice which might be attached to this is already in the case in any event by virtue of the testimony of the Government witnesses so far. We have already heard, in quite vivid detail, from two witnesses in the case who, if they are



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believed, establish beyond a doubt that the defendant was achieving substantial income by his pimping activities.

MR. KAPLAN: Your Honor, on the question of prejudice, I would say that by permitting evidence of a prior plea, the prejudice becomes much greater, and I think the prejudice is of a different sort than merely witnesses on a direct case that are subject to, of course, cross examination as to the believability. In effect, your Honor --

THE COURT: No, I am going to instruct the jury on the point and I am going to allow this. There's another reason. The Government's in the position of calling two ladies, let's say, who were perhaps vulnerable from the credibility point. And I think the Government in its direct case is entitled to buttress that evidence by admissions in effect of the defendant himself.

So exception to Mr. Eliano. I will allow the lady from the courthouse to testify as to the minutes of the plea, but I hope that Count 4 is here. I would like to see that. Count 2.

MR. PADGETT: Your Honor, I have an Assistant District Attorney from the New York County District Attorney's office with the D.A.'s copy of the indictment, and I have the Clerk of the Court who will testify that

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2 their copy, which is the original, is unavailable at this  
3 time. The D.A. will testify that it is the practice to  
4 maintain duplicate copies in the D.A.'s file.

5 THE COURT: You are not going to make any  
6 objection to these technical problems, are you? Do you  
7 want him to go through all this? Mr. Kaplan?

8 MR. KAPLAN: Speaking of the Assistant, your  
9 Honor? The District Attorney's --

10 THE COURT: Yes.

11 MR. KAPLAN: No, I would not think so, your  
12 Honor.

13 THE COURT: I don't see why we have to waste all  
14 our time on that. I understand your objection to the  
15 main evidentiary point, and I respect that, but, I mean,  
16 going through all this technical proof, can't we just agree  
17 that the D.A. would testify that is a true copy and that  
18 the Clerk's Office over there will testify they can't  
19 find the original?

20 MR. PADGETT: I certainly would.

21 THE COURT: Unless you have some doubt about  
22 this, Mr. Kaplan, in which case, of course --

23 MR. KAPLAN: Well, your Honor, it is not, of  
24 course, the doubt that I may have and obviously I am sure  
25 that there was such an indictment and it probably contained



dhkm

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the count that we are speaking about. May I further say, your Honor, insofar as producing, again going to the introduction of the evidence, may I further say, your Honor, that if his plea was in effect an admission against his interest, then I would think, your Honor, that Miranda might even play a part in it.

THE COURT: Sorry, I don't agree with that. I can certainly see your point that in a sense it is an admission against interest, but, on the other hand, it is very much an admission for interest, let's be realistic as to what goes on in the courts of this state and other states. This was a plea bargain.

MR. PADGETT: It certainly was, your Honor.

THE COURT: We know that. I am sorry, Mr. Kaplan. That is an ingenious argument for which I give you credit for ingenuity, but I don't admit to being persuaded.

Exception to your client.

MR. PADGETT: Your Honor, there's one housekeeping detail which I might take care of now.

THE COURT: The jury is coming in. Do we have to?

MR. PADGETT: I think we would save time. It is my understanding, as Mr. Kaplan has indicated to me, he will call two witnesses on the defense.

1 dhkm

2 THE COURT: Let's get through with the  
3 Government's case and then we will worry about the defense.

4 MR. PADGETT: Very well, your Honor.

5 (In open court.)

6 (Jury present.)

7 THE COURT: Good morning, ladies and gentlemen.  
8 Now we are finally all assembled and I think we are ready  
9 with a new witness.

10 MR. PADGETT: The Government calls Bryan Barrett  
11 to the stand.

12 - - -

13 B R Y A N B A R R E T T , called as a witness by the  
14 Government, being first duly sworn, testified  
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. PADGETT:

18 Q Mr. Barrett, by whom are you employed?

19 A By the District Attorney's Office in the County  
20 of New York

21 Q In what capacity?

22 A Deputy Chief, Indictment Bureau.

23 Q As such, are you familiar with the records  
24 maintained by the New York County District Attorney's  
25 Office?



dhkm

Barrett-direct

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1  
2 A Yes, I am.

3 Q In particular, are you familiar with the record  
4 keeping procedures of the Indictment Bureau of the New  
5 York County District Attorney's Office?

6 A Yes, I am.

7 Q For how long have you been employed by the New  
8 York County District Attorney's Office?

9 A I have been employed since August 14, 1972.

10 Q Can you tell us what the practice of the District  
11 Attorney's Office is with respect to the preparation of  
12 indictments.

13 A Yes. We have a staff of several typist-clerks  
14 who are given instructions as to the type of charges and  
15 the language to be contained in the charges, and they  
16 prepare from those instructions an original copy of an  
17 indictment and three carbon copies of the same indictment.

18 Q Can you tell us what happens to the original?

19 A The original copy is filed in the arraignment  
20 Part in the Supreme Court, County of New York.

21 Q Is that copy then used by the Court from all  
22 appearances of the matter on the calendar?

23 A Yes, it is.

24 Q Can you tell us what happens to the carbon copies?

25 A All right. The carbon copies are given out in the

dhkm

Barrett-direct

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1 following manner: One copy is retained in the Assistant  
2 District Attorney's file to be used for his purposes in  
3 preparing the case for trial. One copy is served on each  
4 defendant, and an additional copy, if necessary, is given  
5 to the Criminal Court of the Supreme Court of New York for  
6 their purposes.  
7

8 Q Did you have occasion today to go to the files  
9 of the New York County District Attorney's Office?

10 A Yes, I did.

11 Q Did you withdraw a certain case folder from  
12 those files?

13 A Yes, I did.

14 Q Did you search that case folder to determine  
15 whether or not a carbon copy such as the one you have just  
16 described was contained therein?

17 A I did.

18 Q Was that a carbon copy of Indictment No. 3507  
19 of 1971?

20 A Yes, it was.

21 Q Is that the indictment of the People of the State  
22 of New York against Frank Eliano?

23 A Yes, it is.

24 Q May we see that carbon copy of the indictment,  
25 please? (Handing.)



dhkm

Barrett-direct

423

(Government's Exhibit 17 marked for  
identification.)

Q I show you Government's 17 for identification.  
Is that the carbon copy which you removed from the District  
Attorney's files today?

A Yes, it is.

Q That is Indictment 3507 of 1971?

A That is correct.

Q Thank you.

MR. KAPLAN: Your Honor, I, of course, have a  
standing objection to all of this.

THE COURT: Yes, your client has a standing  
objection to all of this.

MR. KAPLAN: And a motion to strike.

Q Mr. Barrett, there is a notation in pen on that  
indictment. Without reading it, can you tell us what  
that notation means?

A That notation is a notation in pen that is --  
a writing that was added subsequent to the typing of this  
particular carbon copy. I would not know, of course, who  
wrote the notation. Do you want to know what it means?

Q Yes.

A Without stating what --

Q Does it mean that a plea was entered?

dhkm

Barrett-direct

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1           A     It doesn't mean that a plea was entered, it  
2               tends to indicate that there was a plea entered. It  
3               tends to indicate that somebody wrote this down to reflect  
4               that there was a plea of guilty under that charge.  
5

6           Q     I see. Without telling us the substance of  
7               the charge, can you tell us which count of the indictment  
8               that was?

9           A     The second count.

10          MR. PADGETT: May I have just a moment, your  
11          Honor?

12          At this time I would offer Government's 17 in  
13          evidence.

14          MR. KAPLAN: For the reasons stated prior, I  
15          object.

16          THE COURT: Yes. As I have heretofore ruled, the  
17          objection is overruled and the proffered exhibit will be  
18          received. At least, however, it should be noted, Mr.  
19          Padgett, that we are only receiving this as to the caption  
20          in Count 2.

21          MR. PADGETT: That is correct.

22          THE COURT: That is all you are really offering  
23          it for, anyway.

24          MR. PADGETT: That's right.

25          THE COURT: All right.



dhkm

Barrett-direct

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\*\*\*  
(Government's Exhibit 17 received

in evidence.)

Q Mr. Barrett, would you read the caption and the second count of that indictment.

A Yes. The Indictment "People of the State of New York against Frank Eliano.

"Second count, and the grand jury aforesaid by this indictment further accuses said defendant of the crime of promoting prostitution in the first degree, committed as follows: Said defendant in the County of New York on or about February 15, 1969, advanced prostitution by compelling Sandra Marchand, by force and intimidation, to engage in prostitution."

MR. PADGETT: I have no further questions of this witness.

MR. KAPLAN: No questions.

THE COURT: Thank you, Mr. Barrett. You may be excused.

(Witness excused.)

MR. PADGETT: Your Honor, could I have the Court's indulgence for about thirty seconds, please?

MR. KAPLAN: Your Honor --

MR. PADGETT: Your Honor, I apologize to the Court. I am going to have to call a witness out of

(This page left blank intentionally)



dhkm

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MR. PADGETT: The Government calls Arlyne Segal to the stand.

- - -

A R L Y N E S E G A L , resumed.

THE CLERK: May I remind you that you are still under oath.

MR. KAPLAN: Your Honor, may I ask, as the record indicated previously, may I have a standing objection.

THE COURT: Yes, your client has a continuing objection to this, however, the Court's ruling which I made earlier this morning will stand.

DIRECT EXAMINATION CONTINUED

BY MR. PADGETT:

Q Miss Segal, you told us yesterday, but just tell us briefly again, how are you employed?

A I am a court reporter in the New York Supreme Court, Criminal Term.

Q Tell us very briefly, what do your duties entail?

A My duties entail taking a verbatim record in the courtroom and transcribing it.

Q Now, were you so employed on May 31, 1972?

A Yes, I was.

Q In particular, were you employed in that capacity

dhkm

Segal-direct

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in Part 41 of the New York County Supreme Court?

A Yes, I was.

Q Did you take any transcription of proceedings in the matter of the People of the State of New York vs. Frank Eliano, Indictment 3507 of 1971?

A Yes, I did.

Q Now, will you read to us what you transcribed that day?

A Certainly.

"Mr. McGillicutty: If your Honor please, the defendant Frank Eliano, under indictment No. 3507 of 1971, requests permission to withdraw his heretofore entered plea of not guilty under the second count of the subject indictment to the crime of attempt to promote prostitution in the second degree as a Class E felony, and that plea is to cover -- to satisfy the entire indictment.

"The Court: Frank Eliano, did you understand what Mr. McGillicutty said?

"(Thereupon the defendant nods yes. There was no oral response.)

"The Court: By your plea of guilty, you are admitting your guilt to the crime of attempt to promote prostitution, which is a felony; do you understand that?

"The Defendant: Yes, sir.



dhkm

Segal-direct-cross

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"The Court: And do you understand that you are admitting your guilt, you are pleading guilty?"

"The Defendant: Yes."

MR. PADGETT: Thank you. No further questions.

- - -

CROSS EXAMINATION

BY MR. KAPLAN:

Q Is that the end, Mrs. Segal?

A There's just a little more colloquy in here.

Q How much more?

A Actually it is just the arraignment where the Clerk says "Do you withdraw your heretofore entered plea."

Q You didn't read the entire minutes of that occasion, did you, your entire minutes, you have some left over?

A Yes, I have a few things left over.

MR. KAPLAN: With your Honor's permission, just one moment.

Q Miss Segal, you say that the remainder of your minutes there concern the arraignment; is that what you say?

A Yes.

MR. PADGETT: Your Honor, I will be happy to advise Mr. Kaplan privately what is on there, and perhaps

1 dhkm

Segal-cross

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2 I can save some time.

3 MR. KAPLAN: Maybe that will save some time,  
4 Judge. Thank you.

5 Q Would you read the rest, please.

6 A Sure.

7 Q Excuse me. I see Mr. --

8 MR. KAPLAN: May I have a moment? Just one more  
9 moment, if your Honor please.

10 Q Would you continue reading to the very end,  
11 please?

12 A Sure.

13 Q Thank you.

14 A "The Court: Would you give me that indictment  
15 number?

16 "Mr. McGillicutty: We have INDICTMENT No. 3507  
17 of 1971.

18 "The Clerk: Is that your true name?

19 "The Defendant: It is.

20 "The Clerk: All right. Do you now -- Frank  
21 Eliano, do you now withdraw your heretofore entered plea  
22 of not guilty and do you now plead guilty to the crime of  
23 an attempt to promote prostitution in the second degree  
24 as a Class E felony?

25 "The Defendant: Yes, sir.



dhkm

Segal-cross

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"The Clerk: Is Frank Eliano your true name?

"The Defendant: Yes.

"(Thereupon the defendant's pedigree is taken.)

"The Clerk: Date for sentence, your Honor?

"The Court: June 30.

"The Clerk: The 30th of June.

"Mr. McGillicutty: Bail continued?

"The Court: Bail continued."

- - -

Q Miss Segal, do you have minutes subsequent to those minutes concerning the sentence itself?

A No, I have nothing concerning the sentence.

Q You were not present on that occasion?

A No, sir, I was not.

Q And there's nothing more concerning Mr. Eliano on those minutes?

A There is, you know, the statement by the District Attorney about the sentence, but not his actual sentence -- about his recommendation.

Q What did the District Attorney say?

MR. PADGETT: Your Honor, I really must object. I think this is irrelevant to the point at issue.

THE COURT: I would agree. Sustained.

MR. KAPLAN: No further questions, your Honor.

THE WITNESS: Thank you, your Honor.

MR. PADGETT: That is the Government's case,

THE COURT: All right. Ladies and gentlemen of the jury, I am going to ask you to go out to luncheon now and return at a minute or two before two o'clock, at which point we will turn to the defense's case and then hopefully we will get to the closing arguments and the Court's charge.

So see you at two o'clock. Counsel please remain.

(Jury excused.)

MR. KAPLAN: Would your Honor entertain a motion?

THE COURT: That is precisely what I will do.

MR. KAPLAN: Your Honor, if that is the conclusion of the Government's case, the defendant, Mr. Eliano, respectively moves the Court for a judgment of acquittal on the grounds that the Government's case as presented did not contain a prima facie case as within the purview of the indictment, that is, the intent that is required and the counts of the indictment were not proven, your Honor, beyond a reasonable doubt. No prima facie case has been forthcoming, Judge.



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1 dhkm

2 Honor. Aside from omitting the word presents, if the  
3 jury found as a matter of fact from the evidence that  
4 Sandra supported the defendant, although she made the  
5 money, she kept it.

6 THE COURT: Although she made the money she  
7 kept it?

8 MR. KAPLAN: Right, she didn't turn the money  
9 over, but that she supported the defendant without the  
10 word presents, merely supported him. Now, surely they  
11 could have gleaned that from the evidence she gave.

12 THE COURT: I am not sure they could have at all.  
13 She didn't say any such thing.

14 MR. KAPLAN: I don't know whether she said it  
15 or not. But the totality of her testimony was such that  
16 possibly a jury or two or three could have gleaned that  
17 she supported the defendant as a man supports his wife.  
18 If she in fact did have money that the money --

19 THE COURT: I refuse to charge any further than  
20 I did.

21 MR. KAPLAN: I respectfully except, your Honor.

22 (Recess.)

23 (Note from jury -- 6:00 p.m.)

24 (Court's Exhibit 3 marked.)

25



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(Jury not present.)

THE COURT: Gentlemen, this last note reads as follows:

"May we have exact wording of indictment to which Eliano pleaded guilty, New York Supreme Court. Thereafter the decision may be reached almost at once."

Now, I had thought that we had Count 2 in evidence.

MR. PADGETT: It was submitted, your Honor, to the jury.

THE COURT: Right.

MR. PADGETT: I think it is Government's --

THE COURT: May I have the last note? Court's Exhibit 2?

Gentlemen, I am wondering if I and you didn't misconstrue the thrust of the earlier note. "If the relationship between Sandra and Frank was one of 'friendly living together' and she was merely supporting him."

MR. KAPLAN: That is why I suggested, your Honor, the relationship of just a gigolo, a boy friend -- girl friend. The gift came in after, your Honor. The possibility of a gift.

THE COURT: You said something about the gift. That is where I think I went off in misconceiving what

1 dhkm

2 they were about.

3 MR. KAPLAN: I had mentioned very clearly that  
4 that note to me indicated the relationship that I  
5 indicated twice, that they wanted to know whether they  
6 were living together as one who was supporting a gigolo.  
7 I can't think of a better word.

8 THE COURT: I don't mean to argue with you in  
9 terms of your semantics, Mr. Kaplan, I am only saying that  
10 I may have been confused as to the real intent.

11 MR. PADGETT: Your Honor, reading the second  
12 note in light of the third note, I think the third note  
13 speaks to the count of the indictment which talks about  
14 the forceable prostitution of Sandra Marchand, which would  
15 go towards the relationship.

16 MR. KAPLAN: There are only two notes.

17 THE COURT: I understand. Look, gentlemen, I  
18 didn't intend to get into an argument with either one of  
19 you.

20 Let me go back as to the last note, the third  
21 note. Am I correct they should have that in the jury room?

22 MR. PADGETT: They have that, your Honor, I  
23 think it is 17 or 18, I forget. It is there.

24 MR. KAPLAN: Would your Honor reconsider your  
25 further charge in light of what your Honor now believes



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2 to be --

3 THE COURT: Would you like me to?

4 MR. KAPLAN: I certainly would, Judge.

5 THE COURT: All right.

6 (Jury present.)

7 THE COURT: Ladies and gentlemen, I have your  
8 last note. My understanding of your note leads me to say  
9 that you already have the answer to this in your possession.  
10 You have, I believe, or you should have, Government's 17,  
11 which is a copy of the indictment in New York County  
12 Supreme Court, and specifically the only count which is  
13 relevant is Count 2. That is the count in the indictment.  
14 You say you don't have it?

15 JUROR NO. 5: We couldn't seem to locate it,  
16 your Honor, we could go back and look.

17 THE COURT: The Government counsel put it in  
18 his pile of exhibits. I believe you should have it.

19 MR. KAPLAN: Your Honor, was the entire exhibit  
20 received?

21 THE COURT: Please, Mr. Kaplan, you apparently  
22 don't listen to me very frequently at all. I just got  
23 through explaining that the part of this indictment which  
24 is in evidence, the only relevant part, is Count 2, right?

25 MR. KAPLAN: I heard that, Judge, I heard that

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2 but I just wanted to know physically, your Honor, whether  
3 the entire thing was presented.

4 THE COURT: I don't believe that it was. But  
5 what I am trying to say is, Mr. Kaplan, without any  
6 further interruptions from you, Count 2 is the only count  
7 or portion that is relevant, and I assume that is the only  
8 portion the jury has.

9 MR. PADGETT: Your Honor, perhaps we could settle  
10 it by having the reporter read back the reading that the  
11 Assistant District Attorney made this morning of that  
12 portion so there will be no problems. Would that be  
13 possible, Mr. Reporter?

14 MR. KAPLAN: Forgive me, Judge, it is late and  
15 I know, but I must ask this: I still don't know whether  
16 the numbered exhibit was physically the entire indictment.

17 THE COURT: Mr. Kaplan, you and Mr. Padgett  
18 control the exhibits. I gave you a chance to check each  
19 other. You said you had no problem and the exhibits  
20 went in. I wish you would not argue that, because we are  
21 focusing on something else and I repeated to the jury, and  
22 I am sure they understand, that they are not to look at  
23 anything else even assuming something else is in there.

24 MR. KAPLAN: Very good, Judge.

25 THE COURT: But in any event, I am going to adopt



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2 the suggestion your adversary just made so as to remove  
3 any doubt, and I would ask you to just subside, because I  
4 am very aware of what you are trying to tell me, sir,  
5 please.

6 MR. KAPLAN: Yes, your Honor.

7 (Pause.)

8 THE COURT: Now, Mr. Kaplan, you are right.  
9 Your concerns, as it turns out, Mr. Kaplan, are justified.  
10 The marshal did find the exhibit 17 and the entire  
11 indictment is in there, including counts which are not  
12 relevant. However, I see no prejudice to your client  
13 because, as you know, the jury has reported that they  
14 were not able to find it. But since the marshals have,  
15 I will take care of that now by reading to the jury the  
16 relevant portion of this indictment.

17 The caption is, ladies and gentlemen, "The  
18 People of the State of New York against Frank Eliano,  
19 Defendant." Count 2 reads as follows: "And the grand jury  
20 aforesaid by this indictment further accuses said defendant  
21 of the crime of promoting prostitution," to which, as I  
22 recall the evidence, the plea was taken to a Class E  
23 felony in this promoting prostitution in the second degree,  
24 committed as follows, and I quote, "Said defendant in the  
25 County of New York on or about February 15, 1969, advanced

dhkm

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prostitution by compelling Sandra Marchand, by force and intimidation, to engage in prostitution."

Now, while you are here, ladies and gentlemen, I am still concerned about the possibility that I really misunderstood the thrust of your earlier note. Do you remember, that is the one "If the relationship between Sandra and Frank was one of 'friendly living together' and she was merely supporting him rather than working for him, would this be reportable income to Eliano?"

I mentioned something in my instructions when trying to answer you about gifts, and I am afraid that I am guilty of perhaps misunderstanding. Even though you were nice enough to say that you thought I had answered you, I am still sufficiently concerned to take another tack and I am going to ask you to disregard what I said earlier, and consider this: If you were to determine that the evidence showed here that what went on was only that Sandra and Eliano were living together and that she was the person earning income, and that she controlled that money or income, and used part of it to support him, why, then you would be entitled to find that this was reportable income or taxable income to her.

Now, it is important that I emphasize, if you were to find that the facts established are to your



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satisfaction and that this was all that was going on, why, then I would instruct you that if she was getting the money, she was controlling it basically and that she was simply supporting him in their common apartment or home or whatever it is at a given time, and using the money to support him as well as herself, but that she was the true income earner or the head of the household, so to speak, then you would be entitled to find that this was taxable income to her, and not to Eliano, that is, that is, taxable income to Sandra Marchand and not to Frank Eliano.

Now, if you will accept that as the answer to the earlier note and forget what I said earlier, I think, from what I can see now and thinking about it, that is perhaps closer to what you were seeking, is it not?

THE FOREMAN: Yes.

THE COURT: Well, I see you nodding your heads. If there is anybody who disagrees, please don't hesitate to speak up. All right.

Now, what is your pleasure, would you like to go back and see if you could reach a verdict?

JURORS: Yes, your Honor.

THE COURT: Very good.

(The jury retired to further deliberate.)

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1           THE COURT: Mr. Kaplan, let me say to you and  
2 your client that I have instructed the Clerk to hold on  
3 to Government's 17 so that there will be none of the  
4 prejudice that you were concerned about.  
5

6           MR. KAPLAN: Your Honor, for the record, may I  
7 move for the withdrawal of a jury in view of the fact  
8 that Government's 17 in fact was in the jury room and the  
9 exhibit, of course, was --

10          THE COURT: Mr. Kaplan, the whole purpose of  
11 what I just ruled on earlier was just a hundred eighty  
12 degrees to the opposite. The fact is the jury came in  
13 this room and told us flatly that they had not been able  
14 to find it. Their note asked for it.

15          While they were here in your presence and that  
16 of your client and of Government counsel the Court, in  
17 your presence, asked the marshals to locate the exhibit,  
18 which they did. I then read, in your presence and in your  
19 client's presence, the count, with suitable editorializing  
20 so as not to confer any possible prejudice on your client.

21          Therefore, your request is absolutely and flatly  
22 denied.

23          MR. KAPLAN: I respectfully except.

24          MR. PADGETT: Might I point out for the record  
25 that all exhibits, defense and Government exhibits, were



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2 inspected by each of the counsel prior to submission, and  
3 there appeared to be no objection to the submission of any  
4 of the exhibits.

5 THE COURT: I have already observed that. That  
6 is what I thought, too, was done in my presence and I  
7 certainly believe that was our intention. But in any event,  
8 the fact is even assuming that was not done, there was no  
9 prejudice to Mr. Eliano because the jury could not find  
10 the exhibit. And the Court got the exhibit and read it  
11 to them in open court.

12 So there is absolutely no basis in fact or law  
13 for granting a motion to withdraw a jury. Exception to  
14 your client, Frank Eliano.

15 MR. KAPLAN: Thank you, your Honor. May I say  
16 I didn't see that exhibit. Whether I should have or not  
17 is another story.

18 THE COURT: I don't mean to criticize you.

19 THE DEFENDANT: Your Honor, may I be allowed to  
20 say one thing at this point? One sentence? Please?  
21 Please?

22 I would like to represent my lawyer right at  
23 this particular moment and just say one sentence.

24 THE COURT: Why don't you speak to Mr. Kaplan.  
25 Find out.

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## U.S. DISTRICT COURT

50

JAN 28 9 51 AM '75

S.D. OF N.Y.

## United States District Court for

SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT

FRANK ELIANO

DOCKET NO. ➔

74 Crim 267

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date ➔

MONTH	DAY	YEAR
Jan.	10.	1975

COUNSEL

☐ WITHOUT COUNSEL.

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

KENNETH KAPLAN

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted and charged of the offense(s) of **unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar years 1968, 1969 and 1970, and failing to file Federal Income Tax return for the calendar year 1970. (Title 26, United States Code, Sections 7201 and 7203)**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**THREE (3) YEARS on each of counts 1, 2 and 3 to be served concurrently with each other. SIX (6) MONTHS on count 4 to run consecutively of Counts 1, 2 and 3.** It is furthered ordered that the Defendant be ~~committed to an institution~~ <sup>examined</sup> to determine if a medical problem exists and undergo psychiatric consultations if deemed necessary.

COMMITMENT  
& RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ONLY COPY AVAILABLE

CERTIFIED AS A TRUE COPY ON

THIS DATE 1/14/75

BY P. H. K.

SIGNED BY

U.S. District Judge

U.S. Magistrate

HAROLD R. TYLER, JR., U.S.D.J.

**GENERAL  
CONDITIONS  
OF  
PROBATION**

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT** - You shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any change in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Defendant committed 10-3-74

following arrest; ~~is~~ not released

on bail.

**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on 1-16-75 to \_\_\_\_\_

Defendant noted appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

WARDEN, FEDERAL DETENTION HDQRTS., NEW YORK, N. Y. FOR SERVICE OF SENTENCE AT THAT INSTITUTION, OR FOR TRANSPORTATION TO ANOTHER INSTITUTION DESIGNATED BY THE ATTORNEY GENERAL, BY PRISON VAN

*James E. Ferris*  
UNITED STATES MARSHAL  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
United States Marshal,

By \_\_\_\_\_

\_\_\_\_\_  
Deputy Marshal.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

LIHAT

THE PEOPLE OF THE STATE OF NEW YORK,

— against —

FRANK ELIANO,

Defendant

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the  
defendant of the crime of **PROMOTING PROSTITUTION IN THE FIRST DEGREE**, committed  
as follows:

The defendant, in the County of New York, <sup>from</sup> on or about March 18, 1968 to on or about  
October 22, 1970, advanced prostitution by compelling Sandra Marchand by  
force and intimidation to engage in prostitution.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment further accuse said  
defendant of the crime of **PROMOTING PROSTITUTION IN THE SECOND DEGREE**,  
committed as follows:

Said defendant, in the County of New York, on or about February 15,  
1969, advanced prostitution by compelling Sandra Marchand by force and  
intimidation to engage in prostitution.

THIRD COUNT:

AND THE GRAND JURY ~~XX~~ AFORESAID, by this ~~indictment~~ indictment, further  
accuse said defendant of the crime of **PROMOTING PROSTITUTION IN THE SECOND  
DEGREE**, committed as follows:

Said defendant, in the County of New York, <sup>from</sup> on or about January 1, 1969  
to on or about July 28, 1969, advanced and profited from prostitution by  
managing, supervising, controlling and owning, ~~managing, supervising, controlling and owning,~~  
a prostitution business and enterprise involving prostitution activity by  
two prostitutes.

110/230.35

**FOURTH COUNT:**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about February 15, 1969, advanced and profited from prostitution by managing, supervising, controlling and owning, ~~a house of prostitution~~ a prostitution business and enterprise involving prostitution activity by two prostitutes.

**FIFTH COUNT:**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about [January 1, 1969 to on or about July 28, 1969,] advanced prostitution by compelling Frances Bak by force and intimidation to engage in prostitution.

**SIXTH COUNT:**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about January 1, 1969 to on or about July 28, 1969, knowingly advanced and profited from prostitution of a person less than nineteen years old, to wit, Frances Bak.

**SEVENTH COUNT:**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, ~~from~~ on ~~XXXX~~ or about February 15, 1969, advanced prostitution by compelling Frances Bak by force and intimidation to engage in prostitution.



**EIGHTH COUNT:**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about March 12, 1969, advanced prostitution by compelling Sandra Marchand by force and intimidation to engage in prostitution.

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about February 15, 1969, knowingly advanced and profited from prostitution of a person less than nineteen years old, to wit, Frances Bak.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, ~~from~~ on or about <sup>March</sup> ~~January~~ 12, 1969 ~~to~~ ~~on or about July 28, 1969~~ advanced and profited from prostitution by managing, supervising, controlling and owning, ~~\_\_\_\_\_~~ and a prostitution business and enterprise ~~involving~~ involving prostitution activity by two prostitutes.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about September 27, 1970 to October 12, 1970, attempted to advance and profit from prostitution by managing, supervising, controlling and owning, ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ a prostitution business and enterprise involving prostitution activity by two and more prostitutes.

recklessly engaged in conduct which created a grave risk of death to another person, to wit, Frances Bak.

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~~XXXX~~

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF COERCION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about April 11, 1971, attempted to ~~XXXXX~~ compel and induce Sandra Marchand to <sup>abstain from engaging</sup> ~~to/XXXXXX~~ in conduct which said Sandra Marchand had a legal right to engage, by means of instilling in said Sandra Marchand a fear that, if the demand were not complied with, said defendant would cause physical injury to Sandra Marchand.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF COERCION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about April 11, 1971, attempted to compel and induce Debbie Smith to abstain from engaging in conduct <sup>in</sup> which said Debbie Smith had a legal right to engage, by means of instilling in said Debbie Smith a fear that, if the demand were not complied with, said defendant would cause physical injury to Debbie Smith.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of RECKLESS ENDANGERMENT IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 1, 1969, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct which created a grave risk of death to another person, to wit, Frances Bak.

defendant of the crime of a FAULT IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 with intent to cause serious physical ~~injury~~ <sup>injury</sup> to another person, caused such injury to Frances Lak ~~by striking her with a dangerous instrument, to wit, a pistol.~~ <sup>by striking her with a dangerous instrument,</sup>  
~~XXXXXX XXXXXX~~

SIXTEENTH COURT:

AND THE GRAND JURY ~~WILL~~ AFORESAID, by this indictment, further accuse said defendant of the crime of ASSAULT IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 with intent to cause physical injury to another person, caused such injury by striking her with a dangerous instrument, to wit, a pistol.

## SEVENTH - M. H. COUNT:

AND THE GRAND JURY FURTHER, by this indictment, further accuses the defendant of the crime of CONCEALING A FELONY, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 carried and possessed a pistol with intent to use the same unlawfully against another.

1017-1174 COURT:

AND THE GRAND JURY FIND, by this indictment, further accuse said defendant of the crime of ASSAULT WITH A DEADLY WEAPON, committed as follows:

Said defendant, in the County of New York, on or about September 17, 1970 to Mom about September 28, 1970 with intent to cause physical injury to another person, caused such injury ~~with~~ to Sandra Marchand by means of ~~an~~ instrument, to wit, a metal ashtray.



50  
AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of POSSESSING A WEAPON, DANGEROUS INSTRUMENT AND APPLIANCE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 <sup>to or about September 28, 1970</sup> carried and possessed a metal ashtray with intent to use the ~~same~~ same unlawfully against another.

TELEVENTH COUNTY:

~~XXXX/XXXX/XX~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SODOMY IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate sexual intercourse with Sandra Marchand by forcible compulsion.

TELEVENTH COUNTY:

~~XXXX/XXXX/XX~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

Said defendant, ~~XXXX/XX/~~ in the County of New York, on or about September 27, 1970 subjected Sandra Marchand to sexual contact by forcible compulsion.

~~XXXX/XXXX/XX~~

TELEVENTH COUNTY:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL MISCONDUCT, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate sexual intercourse with Sandra Marchand, without the latter's consent.

TELEVENTH COUNTY:

~~XXXX/XXXX/XX~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SODOMY IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate sexual <sup>intercourse</sup> ~~intercourse~~ with Debbie Smith by forcible compulsion.

**TWENTY FOURTH COUNT:**  
**TENTH/DOVVY**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:  
Said defendant, in the County of New York, on or about September 27, 1970 subjected Debbie Smith to sexual contact by forcible compulsion.

**TWENTY FIFTH COUNT:**  
**TENTH/DOVVY**

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL MISCONDUCT, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate intercourse with Debbie Smith, without the latter's consent.

FRANK C. HOGAN,  
District Attorney

ASSAULT  
ASSAULT  
POSSES  
OBSCENITY  
SEXUAL  
INDECENT  
SEXUAL



nsel

No.

A24-241

350, 71

THE PEOPLE OF THE STATE OF NEW YORK

d / day of

1901

against

ds

FRANK ELIANO, 15

12/14/70 15300 - 1206549

T IN THE FIRST DEGREE  
T IN THE SECOND DEGREE  
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IN THE FIRST DEGREE  
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INDICTMENT

PROMOTING PROSTITUTION FIRST DEGREE  
PROMOTING PROSTITUTION SECOND DEGREE  
ATT. PROMOTING PROSTITUTION SECOND DEGREE  
ATT. COERCION FIRST DEGREE  
RECKLESS ENDANGERMENT FIRST DEGREE

Penal Law 230.30, 230.25, 110.00, 135.65, 120.25, 120.05, 265.05

FRANK S. HOGAN

100.00, 100.65,  
10.20, 120.10

District Attorney

A TRUE BILL

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Foreman

